

RWANDA / JUDGMENT

UBUSHINJACYAHA vs SIBOMANA

RPAA 00351/2023/CA

COURT

Court of Appeal

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UBUSHINJACYAHA vs SIBOMANA

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Text

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UBUSHINJACYAHA vs SIBOMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00351/2023/CA (Rugabirwa, P.J.) 29 Ugushyingo 2024] Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Ubusembure – Kugira ngo igikorwa cyitwe icy'ubusembure, uwakorewe icyaha aba agomba kuba ari nyirabayazana wacyo. Ibi bigomba gushyigikirwa n'ibimenyetso bifatika, bitari amagambo gusa y'uregwa. Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Gusaba kugabanyirizwa igihano – Ingaruka z'icyaha – Iyo ingaruka z'icyaha ari nkeya (urugero: uwarenganyijwe yakomeretse ariko ntapfe), bigira uruhare mu gutanga igihano gikurwaho igice cyacyo, nk'uko byagenze muri iki kirego. Incamake y'ikibazo: Ubushinjacyaha bwareze SIBOMANA Athanase mu Rukiko Rwisumbuye rwa Nyarugenge rushingiye ku mvugo ze n'iz'abatangabuhamya batandukanye bamushinja icyaha cy'ubwinjiracyaha bw'ubwicanyi kubera ko yashatse kwica NDAYISABA Florent ubwo yamukubitaga ishoka mu mutwe akamukomeretsa aho bari bari mu kiriyo ku muturanyi. Urukiko rwacye urubanza n° RP 00028/2020/TGI/NYGE rwemeza ko ahamwe n'icyaha cy'ubwinjiracyaha mu cyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka 25, giteganyirijwe icyo cyaha. SIBOMANA Athanase yajuririye urwo rubanza mu Rukiko Rukuru avuga ko asaba kugabanyirizwa ibihano yahawe ndetse bigasubikwa kubera ko

yasembuwe n'uwakorewe icyaha, no kuba we n'umugore we ari imfubyi bakaba bagomba gufatanya kurera abana babyaranye. Urukiko rwasanze atagabanyiriza igihano, rwemeza ko urubanza rujuririrwa rudahindutse. Yongeye kujuririra Urukiko rw'Ubujurire avuga ko yasembuwe bigatuma afata ishoka akayikubita uwakorewe icyaha mu mutwe iramukomeretsa ariko atagambiriye kumwica kuko ntacyo bapfaga. Incamake y'icyemezo: Kugira ngo igikorwa cyitwe icy'ubusembure ni uko uwakorewe icyaha aba ari nawe nyirabayazana w'icyaha yakorewe. SIBOMANA Athanase nta bimenyetso yatanze bigaragaza ko yasembuwe, uretse kubivuga mu magambo gusa, ahubwo Ubushinjacyaha bwatanze ibimenyetso bigizwe n'imvugo z'abatangabuhamya, ndetse n'ukwivuguruza mu mvugo ze, bigaragaza ko atasembuwe. Ku bijyanye n'igihano uregwa agomba guhanishwa, kuba SIBOMANA Athanase ari ubwa mbere akoze icyaha cy'ubwinjiracyaha bw'ubwicanyi ku buryo buzwi, kandi icyo cyaha kikaba cyarateje ingaruka nkeya, kuko NDAYISABA Florent atapfuye, ahubwo yakomerekejwe mu mutwe anakira icyo gisebe, bikwiye kubera uregwa impamvu zituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6), aho kuba igifungo cy'imyaka 25 yari yahawe mbere, bityo imikiriye y'urubanza rwajuririwe ikaba igomba guhinduka ku birebana n'ibihano gusa. Amategeko yakoreshejwe: Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 21. Itegeko n° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 2. Imanza zifashishijwe: RPAA038/15/CS, Ubushinjacyaha vs SEZIKEYE Emmanuel rwaciwe n'Urukiko rw'Ikirenga ku wa 15/09/2017. RPAA 00048/2020/CA, Ubushinjacyaha vs BIMENYIMANA Jean Paul rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022.

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Ubujurire bufite ishingiro ku birebana n'igabanyagihano; Uwajuririye ahanishijwe igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6). Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwakurikiranyeho SIBOMANA Athanase icyaha cy'ubwinjiracyaha bw'ubwicanyi kubera ko ku wa 15/12/2019, mu gihe cya sa sita z'amanywa (12h00), yashatse kwica NDAYISABA Florent ubwo yamukubitaga ishoka mu mutwe akamukomeretsa aho bari bari mu kiriyo ku muturanyi wabo witwa BIZIMANA Bonane wari wapfushije mushikiwe, bapfa impaka z'amakipe. SIBOMANA Athanase yemeye icyaha cy'ubwinjiracyaha bw'ubwicanyi anagisabira imbabazi mu Bugenzacyaha no mu Bushinjacyaha ariko ageze mu Rukiko aragihakana, avuga ko icyo yakoze ari ugukubita no gukomeretsa gusa. [2] Urukiko Rwisumbuye rwa Nyarugenge rwaregewe rushingiye ku mvugo ze n'iz'abatangabuhamya batandukanye bamushinja barimo n'umugore we MUKANYABYENDA Emmanuela, ku nyandikomvugo y'ifatira y'ishoka, ku mafoto agaragaza igice NDAYISABA Florent yakubiswemo ishoka no kuri raporo ya muganga igaragaza ko NDAYISABA Florent yakomerekejwe mu mutwe, rwaciye urubanza n° RP 00028/2020/TGI/NYGE ku wa 24/07/2020, rwemeza ko SIBOMANA Athanase ahamwe n'icyaha cy'ubwinjiracyaha mu cyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka 25, giteganyirijwe icyo cyaha. [3] SIBOMANA Athanase yajuririye urwo rubanza mu Rukiko Rukuru avuga ko asaba kugabanyirizwa ibihano yahawe ndetse bigasubikwa kubera ko yasembuwe na NDAYISABA Florent wakorewe icyaha, no kuba we n'umugore we ari imfubyi bakaba bagomba gufatanya kurera abana babyaranye. [4]

Uhagarariye Ubuhinjacyaha avuga ko SIBOMANA Athanase atagabanyirizwa igihano kubera ko atasembuwe, ko ahubwo mu Bugenzacyaha yemeye icyaha cy'ubwinjiracyaha bw'ubwicanyi anagisabira imbabazi asobanura ko yagikoze abitewe n'inzoga n'umujinya, ariko ko yageze mu Rukiko akagihakana. [5] Urukiko Rukuru rushingiye ku kuba SIBOMANA Athanase akomeza gukakana icyaha cy'ubwinjiracya mu bwicanyi akavuga ko yasembuwe, nyamara ntavuguruze ibimenyetso byashingiweho n'Urukiko rubanza rumuhamya icyaha ashinjwa, rwasanze atagabanyirizwa ibihano yahawe ku rwego rwa mbere nk'uko abisaba, ruca urubanza n° RPA 00945/2020/HC/KIG ku wa 10/07/2023, rwemeza ko urubanza rwajuririwe rudahindutse, ko igifungo cy'imyaka 25 yahanishijwe kigumye. [6] SIBOMANA Athanase yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe buhabwa n° RPAA 00351/2023/CA, urubanza ruburanishwa mu ruhamye ku wa 18/11/2024, SIBOMANA Athanase yunganiwe na Me UZABAKIRIHO Irené, naho Ubushinjacyaha buhagarariye na RUDATINYA Gapard, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu mwanzuro w'ubujurire no mu miburanire, SIBOMANA Athanase n'umwunganira bavuga ko akwiye kugabanyirizwa ibihano kubera ko yasembuwe na NDAYISABA Florent bituma afata ishoka ayimukubita mu mutwe iramukometretsa ariko atagambiriye kumwica kuko ntacyo bapfaga. [8] Naho uhagarariye Ubushinjacyaha avuga ko SIBOMANA Athanase atagabanyirizwa ibihano hashingiwe ku busembure kuko nta bimenyetso abutangira, ko ahubwo akwiye kugabanyirizwa ibihano ku bw'itegeko, agahanishwa igifungo cy'imyaka 12 n'amezi 6 hashingiwe ku ngingo ya 2(b) y'Itegeko n°

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059/2023 ryo ku wa 4/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, cyane cyane mu ngingo yaryo ya 60. [9] Urukiko ruherereye kuri izo mpaka, rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari icyo kumenya niba SIBOMANA Athanase yakoze icyaha abitewe n'ubusembure no kumenya niba hari impamvu yatuma agabanyirizwa ibihano. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba SIBOMANA Athanase yakoze icyaha abitewe n'ubusembure no kumenya niba hari impamvu yatuma agabanyirizwa ibihano [10] SIBOMANA Athanase n'umwunganira bavuga ko hashingiwe ku ngingo ya 49, 55, 56 na 57 z'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange ryakurikizwaga igiha icyaha cyakorwaga, akwiye kugabanyirizwa ibihano kubera ko yaburanye yemera icyaha anagisabira imbabazi, ariko ko Urukiko Rukuru rutabihaye agaciro, rwirengagiza ko yakoze icyaha bitewe n'ubusembure yakorewe na NDAYISABA Florent nk'uko byanemejwe n'abatangabuhamya babajijwe. [11] Basobanura ko yahuriye na NDAYISABA Florent mu kiriyo banywa inzoga hari umupira wa APR na GASOGI, ko kubera ubusinzi batonganye bapfa uwo mupira, maze NDAYISABA Florent amukupita icupa bimutera uburakari bwatumye atabasha kwigenzura, bituma nawe afata ishoka yari aho, barayirwanira imukomeretsa igikomere kiringaniye, ndetse ko cyakize, ubundi avuga ko yayimukubise mu mutwe iramukomeretsa, ariko ko atari afite umugambi wo kumwica, kuko ako kanya yahise amusaba imbabazi undi arazimuha, cyane cyane ko ajya amusura muri Gereza, bigaragara ko mbere na nyuma y'uko barwana nta kibazo bari bafitanye. Basaba ko yagabanyirizwa igihano kubera ko yemera igikorwa cyo kuba

arakubise NDAYISABA Florent ishoka ikamukomeretsa mu mutwe, ariko nta mugambi wo gukora icyaha cy'ubwinjiracyaha bw'ubwicanyi yari afite. [12] Uhagarariye Ubushinjacyaha avuga ko SIBOMANA Athanase atagabanyirizwa ibihano kubera ko atemera icyaha cy'ubwinjiracyaha bw'ubwicanyi yakoze ngo anagisabire imbabazi, ko ahubwo yemera igikorwa yakoze cyo gukubita NDAYISABA Florent ishoka mu mutwe ikamukomeretsa, akavuga ko yabitewe n'ubusembure, ariko nta kimenyetso abitangira, kuko abatangabuhamya babajijwe aribo BIZIMANA Bonane, MUKANYABYENDA Emmanuela, umugore we, na NTWARI Dieudonné, bese bemeje ko nta busembure bwabayeho, kuko basobanuye uburyo SIBOMANA Athanase yatonganye na NDAYISABA Florent n'uburyo SIBOMANA Athanase yagiye mu rugo rwe kuzana ishoka akayimukubita mu mutwe ikamukomeretsa. [13] Avuga kandi ko Ubushinjacyaha bwari bwabaye ko SIBOMANA Athanase ahanishwa igifungo cy'imyaka 12 n'amezi 6 mu gihe hari impamvu nyoroshyacyaha, ariko ko kubera ko atemeye icyaha ngo anagisabire imbabazi, akwiye guhanishwa igihano kiri hagati na hagati y'icyo n'igifungo cy'imyaka 25 yahawe mbere. UKO URUKIKO RUBIBONA [14] Ingingo ya 21, igika cya 2, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Ubwinjiracyaha burahanirwa n'ubwo icyari kigambiriwe kitashoboraga kugerwaho bitewe n'impamvu nyir'ugukora icyaha atashoboye kumenya". Naho igika cya 3 cy'iyi ngingo kigateganya ko "Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe cya kabiri (1/2) cy'igihano giteganyirijwe icyo cyaha. Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25)".

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[15] Naho ingingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, igateganya ko "Ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ihinduwe ku buryo bukurikira: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: (b) igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye muni ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe". [16] Nk'uko byatanze umurongo mu rubanza n° RPAA 00048/2020/CA rwaciwe n'uru Rukiko ku wa 26/05/2022, mu gika cyarwo cya 24, haburana Ubushinjacyaha na BIMENYIMANA Jean Paul, ukwemera icyaha gushobora kugirira ushinjwa akamaro ari ugukozwe nibura iburanisha ku rwego rwa mbere ritarapfundikirwa. [17] Naho ku kibazo cyo kumenya igihe uwakorewe igikorwa runaka bifatwa ko ari icy'ubusembure, cyatanze umurongo mu rubanza N° RPAA038/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 15/09/2017 haburana Ubushinjacyaha na SEZIKEYE Emmanuel, aho rwasobanuye ko "kugira ngo igikorwa cyitwe icy'ubusembure ni uko uwakorewe icyaha aba ari nawe nyirabayazana w'icyaha yakorewe". [18] Nk'uko bigaragarira mu gika cya 6 cy'urubanza rujurirwa, Urukiko Rukuru rwasobanuye ko SIBOMANA Athanase nta bimenyetso yatanze bigaragaza ko yasembuwe, uretse kubivuga mu magambo gusa, ko ahubwo Ubushinjacyaha bwatanze ibimenyetso bigizwe n'imvugo z'abatangabuhamya, ndetse n'ukwivuguruzwa mu mvugo ze, bigaragaza ko atasembuwe. [19] Mu Bugenzacyaha, SIBOMANA Athanase yemeye icyaha aregwa anagisabira imbabazi,

asobanura ko yatonganye na NDAYISABA Florent bapfa amakipe, ko kubera ubusinzi, uyu yamukubise urushyi bimutera umujinya, ajya mu rugo rwe, azana ishoka ayimukubita mu mutwe inshuro imwe agwa igihumure yikubita hasi, ariko ko yumvaga atabaho. [20] Hari kandi umutangabuhamya witwa BIZIMANA Bonane wasobanuye mu Bugenzacyaha ko uwitwa Dieudonné yabwiye abana bari aho ko azabaha bonane APR iramutse itsinze RAYON SPORT, ko kubera ko SIBOMANA Athanase yabyumvise ari hanze, yibwiye ko bivuzwe na NDAYISABA Florent maze SIBOMANA Athanase atangira kumutuka ibitutsi byinshi, ko bafatanye batangira kurwana, uretse ko babakijije bakibwira ko byarangiye, ariko ko SIBOMANA Athanase yagiye mu rugo rwe hashize akanya azana ishoka ayikubita NDAYISABA Florent mu mutwe undi yikubita hasi, agiye kongera kuyimukubita, baramufata, barayimwambura. [21] Na none umutangabuhamya witwa NTWARI Dieudonné yasobanuye mu Bugenzacyaha ko SIBOMANA Athanase na NDAYISABA Florent bakomeje kujya impaka z'amakipe, ko SIBOMANA Athanase yagiye mu rugo rwe azana ishoka ayikubita NDAYISABA Florent mu mutwe bituma avirirana amaraso menshi, ndetse ko iyo batahaba, SIBOMANA Athanase aba yaramwishe kuko bamwambuye ishoka agiye kongera kuyimukubita. [22] Umutangabuhamya witwa MUKANYABYENDA Emmanuela, umugore wa SIBOMANA Athanase, yavuze ko umugabo we yamubwiye ko NDAYISABA Florent amwise igicucu, amubwira ko ntacyo aribube, ariko ko yasubiyeyo bararwana agaruka ava amaraso hejuru y'ijisho, ko yafashe ishoka ayikubita NDAYISABA Florent mu mutwe. [23] Raporo ya muganga iri muri dosiye igaragaza kandi ko NDAYISABA Florent yakubiswe ikintu mu mutwe akanakomeretswa, ko kandi byamuviriyemo kumara iminsi itatu (3) ntacyo ashobora kwikorera. [24] Isesengura ry'ubuhamya bw'abatangabuhamya bamaze kuvugwa haruguru rigaragaza ko SIBOMANA Athanase na NDAYISABA Florent batonganye bapfa iby'amakipe y'umupira, kandi ko SIBOMANA Athanase yamututse amuziza ko yabwiye abana ko azabaha bonane APR iramutse itsinze

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RAYON SPORT, ndetse ko nyuma yaho, SIBOMANA Athanase yagiye mu rugo rwe azana ishoka ayikubita NDAYISABA Florent mu mutwe bituma avirirana amaraso menshi, ndetse ko iyo abantu batahaba, SIBOMANA Athanase aba yarongeye kuyimukubita. [25] Urukiko rw'Ubujurire rurasanga, SIBOMANA Athanase atarigeze asemburwa na NDAYISABA Florent, kuko nta bimenyetso abatangira uretse kuvuga mu magambo ko yakubiswe urushyi na NDAYISABA Florent, nyamara nta wundi mutangabuhamya ubyemeza, ko ahubwo BIZIMANA Bonane nk'umutangabuhamya wari aho icyaha cyabereye yemeza ko ari SIBOMANA Athanase wabanje kumusagarira amutuka yibwira ko ariwe wabwiye abana ko azabaha bonane mu gihe APR itsinze RAYON SPORT, bigaragara rero ko SIBOMANA Athanase atagabanyirizwa ibihano kubera ubusembure mu gihe atabigaragariza ibimenyetso nk'uko byemejwe n'Urukiko Rukuru. [26] Hashingiwe ku murongo watanze mu rubanza n° RPAA 00048/2020/CA rwaciwe ku wa 26/05/2022 haburana Ubushinjacyaha na BIMENYIMANA Jean Paul rwavuzwe haruguru, Urukiko rw'Ubujurire rurasanga SIBOMANA Athanase atagabanyirizwa ibihano hashingiwe ku kwemera icyaha kwe no kugisabira imbabazi kubera ko atigeze yemera icyaha cy'ubwinjiracyaha

bw'ubwicanyi ku buryo budashidikanywaho kuva rwego rwa mbere, kuko aburanisha ubusembure, kandi nta kimenyetso kigaragaza ko bwabayeho nk'uko byasobanuwe haruguru. [27] Ku bijyanye n'igihano uregwa agomba guhanishwa, hashingiwe ku ngingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, ndetse no ku ngingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, Urukiko rw'Ubujurire rurasanga kuba SIBOMANA Athanase ari ubwa mbere akoze icyaha cy'ubwinjiracyaha bw'ubwicanyi ku buryo buzwi, kandi icyo cyaha kikaba cyarateje ingaruka nkeya, kuko NDAYISABA Florent atapfuye, ko ahubwo yakomerekejwe mu mutwe anakira icyo gisebe, bikwiye kubera SIBOMANA Athanase impamvu zituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6), aho kuba igifungo cy'imyaka 25 yari yahawe mbere, bityo imikirize y'urubanza rwajuririwe ikaba igomba guhinduka ku birebana n'ibihano gusa. III. ICYEMEZO CY'URUKIKO [28] Rwemeje ko ubujurire bwa SIBOMANA Athanase bufite ishingiro ku birebana n'igabanyagihano. [29] Ruvuze ko imikirize y'urubanza n° RPA 00945/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 10/07/2023, ihindutse gusa ku birebana n'igihano SIBOMANA Athanase ahanishijwe. [30] Ruhanishije SIBOMANA Athanase igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6). [31] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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